

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 1127 (M/S) 2006

Dayali Ram S/o Badri Prasad,
Resident of Mandi House, Haridwar,
Tehsil and District Haridwar. -- Defendant/Petitioner.

Versus

1. Judge Small Cause Court/District Judge, Haridwar,
2. Civil Judge (J.D.), Haridwar,
3. Rajendra Kumar Sharma S/o Ram Kishan Sharma,
Resident of Mandi House,
P.N.B. Haridwar, District Haridwar. --Respondents.

Sri Lalit Tewari, learned counsel for the petitioner,
Learned Standing Counsel for the State.
Sri LokPal Singh, learned counsel for respondent no. 3,

Hon'ble M.M. Ghildiyal, J.

Heard Sri Sri Lalit Tewari, learned counsel for the petitioner, learned Standing Counsel for the State and Sri Lok Pal Singh learned counsel for respondent no. 3.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

- a) Issue a writ or order in the nature of certiorari quashing the impugned orders dated 17.07.2006 and 31.08.2005 (annexure no. 1 & 2 respectively to this writ petition),
- b) Pass such order which this Hon'ble Court deem just and proper in the circumstances of the present case.

Brief facts, as narrated in the writ petition, are that the plaintiff/respondent no. 3 filed a S.C.C. Suit no. 2 of 1998 on 4th

February 1998 seeking eviction of the defendant/petitioner from the property situated at Mandi House, opposite Punjab National Bank, Haridwar with the allegation that the defendant has made alteration/construction in the property and has fallen in default in making payment of rent also. The defendant has also sublet the property under dispute.

Written statements were filed by the defendant/petitioner and thereafter the learned trial Court framed necessary issues after perusing the pleadings.

On 02.05.2005, after a long gap, the defendant/petitioner moved an application before the trial Court that in the plaint the plaintiff/ respondent no. 3 has not mentioned the actual date of alteration or the construction made in the house in dispute. Thereafter, the plaintiff/respondent no. 3 moved an amendment application specifying the date on which the defendant/petitioner has made material alteration in the house in dispute by making construction. The said amendment application was allowed by the trial Court on 31.08.2005, against which the defendant/petitioner preferred revision before the District Judge, Haridwar and the District Judge, Haridwar on 17.07.2006, dismissed the same.

Submission of the learned counsel for the petitioner is that the plaint could not have been amended after framing of the issues and the trial Court as well as the Revisional Court have erred in law in allowing the amendment application. Further, the facts were already in the knowledge of the of the plaintiff/respondent no. 3 before filing the plaint in the trial Court and these facts cannot be brought by way of amendment. I do not find any force in the submissions made by learned

counsel for the petitioner because the plaintiff/respondent no. 3 has already taken the plea in the plaint that the defendant/petitioner has materially altered the house by making construction. However after about 8 years, the petitioner has himself moved application that specific date has not been mentioned by plaintiff/respondent no. 3 in reply of the application, the plaintiff has moved amendment application that in the year 1997 the defendant/petitioner has made alteration by making construction in the house in dispute.

It is apparent that the plea of alteration was already there in the plaint and it was only a prayer in the amendment application to mention the date in the plaint on which the defendant has made material alteration in the property in house. By the amendment application, the plaintiff/respondent no. 3 has only specified the date on which defendant has made alteration and that too after making objection by the defendant/petitioner that no specific date of alteration is mentioned in the plaint.

Having heard learned counsel for the parties and perusing of the record, I am of the view that the Court below in deciding the amendment application have rightly concluded that the subsequent amendment can be implemented after the suit is filed because it avoids multiplicity of the litigation and the Court can decide the case on merits. It is well settled law that in deciding the amendment applications, the court should not take into account the technicalities of the case rather the Court may be vigilant towards the contentment of the litigants. Keeping in view the aforesaid facts, the trial Court has rightly allowed the amendment application imposing cost of Rs. 300/-, which I

think, in the circumstances, is nominal and justified. The defendants have efficacious remedy by filing additional written statements before the Court below. The defendants by filing the writ petition have occupied the strategy of delaying the hearing of the suit as the suit has been filed long back in the year 1998 and further, the proceedings cannot be initiated in the suit on account of pendency of the writ petition.

This Court is of the view that when efficacious remedy is available to the aggrieved party before the Court below, the same may be availed for speedy disposal of the suit so that the Court below may approach to its conclusion on merits. The writ petition is devoid of merits and is liable to be dismissed.

The writ petition is dismissed accordingly.

The interim relief application no. 10748/06 also stands disposed of.

(M.M. Ghildiyal, J.)

August 24, 2006;
NCM: